

NTSB Order No. EA-3997

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 5th day of October, 1993

Docket SE-11960

1990.² However, the law judge reduced the sanction ordered by the Administrator for that alleged FAR violation from a 15-day suspension of respondent's airline transport pilot (ATP) certificate to one of three days.³

The Administrator's order of suspension (which served as the complaint), included the following allegations:

2. On or about January 23, 24, and 25, 1990, you operated as pilot in command N2514L,^[4] a Cessna 402C, pursuant to the Part 135 authority of Aero Coach Aviation International.
3. During a routine ramp check of N2614L, an aviation safety inspector found a plain piece of paper with a reference to "A/C N2614L", dated January 23, 1990, in the maintenance logbook of N2614L.

²FAR § 135.65 provides in pertinent part:

"§ 135.65 Reporting mechanical irregularities.

(a) Each certificate holder shall provide an aircraft maintenance log to be carried on board each aircraft for recording or deferring mechanical irregularities and their correction.

(b) The pilot in command shall enter or have entered in the aircraft maintenance log each mechanical irregularity that comes to the pilot's attention during flight time. Before each flight, the pilot in command shall, if the pilot does not already know, determine the status of each irregularity entered in the maintenance log at the end of the preceding flight."

³That reduction in sanction was not appealed by the Administrator.

⁴This reference to the aircraft in question as "N2514L" is incorrect. As noted elsewhere in the complaint and confirmed by the evidence (see Exs. A-2 through A-6), the proper designation of the aircraft is N2614L. As respondent has pointed out (see Respondent's Br. 4), the law judge also mistakenly referred to the aircraft as N2514L in her initial decision (see Tr. 183). We note, however, that such incorrect identification of the aircraft did not prejudice respondent in either the preparation of his defense to the Administrator's allegations or the prosecution of his appeal from the law judge's decision. Thus, it is of no significance herein.

4. The plain piece of paper had the information listed below written on it:
 - Item #1 Left Landing Light Inop
 - Item #2 Pilot window has a big hole at
inside forward frame; it creates
a loud suction noise during
flight and also it looks very
bad.
 - Item #3 Cabin Fan Inop
 - Item #4 VHF #2 reported breaking up by
ATC (transmitter)
5. At the time of the ramp check, the maintenance logbook for N2614L contained no notation of the information listed on the plain piece of paper.

According to the evidence adduced at the hearing, the ramp inspection referred to in the complaint took place on January 26, 1990, at which time another individual was piloting the aircraft, and the piece of paper in question (hereinafter referred to as the discrepancy memorandum) was discovered when it fell out of the aircraft maintenance logbook during the ramp inspection.

In connection with his appeal, respondent contends that the Administrator did not establish that the items set forth in the discrepancy memorandum constituted "mechanical irregularities" and, as a result, failed to demonstrate that he was required to enter such items in the aircraft maintenance log under FAR section 135.65. Respondent further maintains that even if those items could properly be deemed mechanical irregularities, he nevertheless complied with section 135.65 by inserting the discrepancy memorandum in the logbook. In addition, respondent avers that the law judge displayed a lack of impartiality and

"stepped out of her neutral role as trier of fact and law" in her

questioning of one of his witnesses.⁵

The Administrator has submitted a reply brief, in which he urges the Board to affirm the law judge's initial decision. In that brief, he withdraws his allegation that the first item set forth in the discrepancy memorandum constituted a mechanical irregularity, in light of evidence that the left landing light had been covered with a metal plate "in accordance with an FAA approval."⁶ Thus, the Board will focus solely on the other three items appearing in the discrepancy memorandum in evaluating the validity of the Administrator's section 135.65 charge.

Turning to respondent's contention that the items in question do not constitute mechanical irregularities, we note that the evidence suggests that those items were not of such a nature as to have required immediate repair.⁷ Nevertheless, the

⁵See Respondent's Br. 5.

⁶Administrator's Br. 15 & n.5. Although the evidence indicates that a plate was placed over the left landing light housing at some point in time, it is unclear as to whether this was accomplished before January 23, 1990. See Tr. 75, 91, 134; Ex. A-3 at 4. While it is, therefore, uncertain as to whether a mechanical irregularity attributable to the left landing light existed at the time, we will not address that question in view of the Administrator's withdrawal of that allegation.

⁷Specifically, the record indicates that the hole in the pilot side cockpit window was created in connection with the repair of a locking mechanism, remained because maintenance personnel failed to cover it after completing such repair work, and did not adversely affect the performance of the aircraft (Tr. 103, 116, 135-37); that the cabin fan was used only when the aircraft was on the ground and also did not adversely affect aircraft performance (id. 138); and that the radio problem experienced by respondent affected only one of the aircraft's two transmitters, was temporary in nature, and was quite possibly attributable to atmospheric conditions (id. 138-40, 148).

Board has held that "any deviation from the normal functioning of an aircraft component no matter how slight or momentary," constitutes a mechanical irregularity.⁸ Each of the three items at issue clearly falls within that definition of the term. Consequently, respondent was required by FAR section 135.65 to enter such items in the aircraft maintenance logbook.

While respondent argues that he accomplished this by inserting the discrepancy memorandum in the logbook, the Board believes that it was, instead, necessary for him to have made an entry reflecting the items in question on the pages of the logbook itself. In this regard, we note that the purpose of the logbook entry requirement is to assure that maintenance personnel and subsequent flight crews are apprised of all mechanical irregularities, so that appropriate action may be taken with respect thereto.⁹ Indeed, this case illustrates the hazards of a pilot's failure to make an entry directly onto the logbook's pages, as respondent's discrepancy memorandum apparently went unnoticed prior to the ramp inspection and could easily have been

⁸Administrator v. Leighton, 3 NTSB 413, 414 (1977) (emphasis added), in which the respondent was charged with a violation of FAR § 121.563. That regulation contained language similar to § 135.65 in providing that pilots in command of flights governed by Part 121 "shall enter or have entered in the maintenance log of the airplane each mechanical irregularity that comes to his attention during flight time." See also Administrator v. Schoppaul, NTSB Order EA-3410 at 10 (1991), in which we held that an airman having "even a 'small worry'" about the functioning of an aircraft component is required to enter that item in the maintenance logbook under § 121.563.

⁹See Administrator v. Leighton, supra, 3 NTSB at 415; Administrator v. Schoppaul, supra, NTSB Order EA-3410 at 10.

lost upon becoming dislodged from the logbook. The Board must, therefore, find that respondent failed to comply with the logbook entry requirement of section 135.65.¹⁰

Insofar as respondent's claim of bias is concerned, we have carefully reviewed the record and are unable to discern a lack of objectivity on the part of the law judge in her treatment of the parties. In particular, we note that the law judge, in questioning witnesses, was fulfilling her legitimate function to fully develop the evidentiary record, and we find nothing unusual or prejudicial in her performance of that function in this case.

¹⁰In this regard, we note that respondent has averred that he could not fit all of the entries appearing in his memorandum in the space provided for listing mechanical discrepancies on a maintenance logbook page. See Respondent's Br. 10. We find no merit whatsoever in this argument. In the first place, there is evidence that the entries could have been fit into such space. See Ex. A-8. Moreover, even if it had been impossible for respondent to have written all of the entries in the space provided on one logbook page, there is no reason why he could not have continued the list of discrepancies on the following page of the logbook.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The Administrator's order, as modified by the law judge, is affirmed; and
3. The three-day suspension of respondent's ATP certificate shall commence 30 days after the service of this order.¹¹

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART, and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

¹¹For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).